United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: July 25, 2005

TO : Michael McConnell, Regional Director
Region 17

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Aquila, Inc. 530-6067-2040-8075
Case 17-CA-23068 530-6067-6001-2000
530-6067-6001-3780

This Section 8(a)(5) case was submitted for advice as to whether the Union has a right to access the Employer's intranet website (which contains, among other features, Employer announcements regarding unit and nonunit employees' terms and conditions of employment), on the theory that the website is allegedly a "work area" akin to others in the Employer's physical facility to which the Union has historically had unfettered access.

We consider the Union's request as tantamount to a request for the information provided on the Employer's entire intranet website, and to information in any sites linked from that website. Because the Union's request is overbroad, and because the Union has neither demonstrated the relevance of the information contained on the entire website or accepted the Employer's offer to discuss alternatives, we conclude that the Employer did not violate Section 8(a)(5) by denying the Union's request.

FACTS

Aquila, Inc. (the Employer) and Electrical Workers IBEW Local 814 (the Union) have a collective bargaining relationship. The Union currently represents a unit of employees engaged in producing and providing electrical power to the Employer's customers.

The unit employees in question are employed at the Employer's Sibley power plant and at Employer service centers. About 105 of the 325 unit employees work at the power plant and have access to free-standing computer terminals in their departments. The remaining 220 employees perform work in the field, and while they may use a computer when they are at their respective service centers, the Union acknowledges that the employees have little access to them. The unit employees at the power plant not only use computers in connection with their jobs, but can and do use the computer terminals to access the Employer's nonpublic intranet website.

On the Employer's intranet website are links to Human Resources, Benefits, News, and Stock Quotes. The News link directs employees to "Infonet Online", where announcements to both unit and nonunit employees and other business related news items are posted. The Employer asserts that some of these links lead to a series of internal corporate links leading to corporate policies, procedures, and confidential data.

On February 8, 2005,[1] during the term of an existing contract, the Employer announced to the Union that it was going to implement a new drug testing and background check requirement for unit employees. The Employer provided the Union with a printout of a webpage from its Infonet Online. This Infonet Online page informed employees about the new drug testing and background check requirements, and listed the asserted reasons for the new testing, including claims that they were required by federal statutes and regulations.

On April 1, the Union business manager wrote to the Employer requesting documentary information related to the implementation of the new drug testing and background checks. He also asked that he be given access to the Employer's intranet website, as the intranet was used by the Employer to communicate with unit employees concerning mandatory subjects of bargaining.

By letter dated April 14, the Employer declined to provide complete access to its "internal systems." The Employer explained that while employees may access the intranet, all third parties are declined access. The Employer stated that it was willing to discuss other methods of providing the Union with the information, and asked for clarification as to why the Union was unable to obtain the information from stewards and members employed by the Employer and having access to the intranet.

On May 9, the Employer informed the Region that it had not received a response from the Union regarding its April 14 letter. The Employer also proposed that it would be willing to send a weekly email to the Union with an index of items on the Infonet Online. If the Union saw an item of interest on the weekly summary, and requested a full copy, the Employer would then provide it. The Region relayed to the Union the Employer's offer of accommodation.

The Union has not responded to either the Employer's April 14 letter or to its May 9 offer of accommodation communicated through the Region.

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[1] All dates are in 2005, unless otherwise noted.

ACTION

We conclude that the Union's request for "access" to the Employer's intranet website in order to view the materials posted thereon constituted a request for information.[2] That request was overbroad in that by accessing the entire intranet website, the Union would obtain other information which is not presumptively relevant to the Union's collective-bargaining rights and obligations regarding unit employees. Because the Union has failed to articulate a reason as to why that other information is relevant, and has failed to respond to the Employer's offer to discuss other methods of providing the relevant information and/or its offer of accommodation, we conclude that the Employer did not violate the Act by denying the Union complete access to its intranet website. Accordingly, that charge allegation should be dismissed, absent withdrawal.

A party engaged in collective bargaining must provide, upon request, information which is relevant for the purpose of contract negotiations or contract administration.[3] Information regarding terms and conditions of employment of employees actually represented by a union is presumptively relevant and necessary and is required to be produced.[4] However, when a union requests information about employer operations or employees other than those it represents, the union bears the initial burden of showing relevancy.[5] The Board applies a "liberal, discovery-type" standard to determine whether requested information is probably or potentially relevant to the execution of the union's statutory duties.[6] A mere suspicion that the information is

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[2] We note that the Union did not ask for access to the website in order to communicate with unit employees.

[3] NLRB v. Acme Industrial Co., 385 U.S. 342 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149, 152-153 (1956); Leland Stanford Junior University, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).

[4] Proctor Mechanical Corp., 279 NLRB 201, 204 (1986), quoting Bohemia, Inc., 272 NLRB 1128, 1129 (1984).

[5] NLRB v. Associated General Contractors, 633 F.2d 766, 770 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981).

[6] Pfizer Inc., 268 NLRB 916, 918 (1984), enfd. 763 F.2d 887 (7th Cir. 1985); NLRB v. Acme Industrial Co., 385 U.S. at 437.

relevant, however, without some objective factual basis for so believing, is not sufficient to require its disclosure.[7]

At the same time, if a union's request for information is ambiguous or overbroad, an employer cannot simply ignore it. The employer must either request clarification and/or comply with the request to the extent it encompasses necessary and relevant information.[8]

Here, the Union did not ask for access only to presumptively relevant information regarding unit employees' terms and condition of employment, but for access to the entire, apparently indivisible intranet website and to the sites linked therefrom. The Union did not articulate reasons or a rationale why it needed to view the information which was not presumptively relevant. Therefore, the Union's request was overbroad.

Faced with that overbroad request for information on the entire website and linked sites, the Employer requested clarification in its April 14 response and offered to discuss alternative ways of providing relevant information. Given that the Employer did not flatly reject the Union's request which clearly encompassed at least some presumptively relevant information, given the Union's failure to respond, and given the nature of the website containing both preumptively relevant information and extra-unit information for which the Union has not established relevancy, we conclude that the Employer did not violate Section 8(a)(5) by failing to provide the Union continuing access to all information accessible through its intranet website. This conclusion is bolstered by the Employer's offer to accommodate the Union's interest in presumptively relevant information, an offer to which the

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[7] Bohemia, Inc., 272 NLRB at 1129.

[8] Keauhou Beach Hotel, 298 NLRB 702, 702 and n.3 (1990), and cases cited therein; see also Beth Abraham Health Services, 332 NLRB 1234, 1234-35, 1240 (2000); National Electrical Contractors Assn., 313 NLRB 770, 771 (1994).

Union has not responded. In all these circumstances, the Region should dismiss this allegation of the charge, absent withdrawal.[9]

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[9] We do not and need not reach the issue of whether the Employer could lawfully reject a request by the Union for more limited access to certain sections of the Employer's intranet website.